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No. 85-812

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

GEORGE N. VANTERPOOL
AND MARJORIE VANTERPOOL,
Petitioners,

v.

HESS OIL VIRGIN ISLANDS CORP.,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRITAIN H. BRYANT, Esquire
Counsel of Record
NANCY V. YOUNG, Esquire

LAW OFFICES OF BRITAIN H. BRYANT
#7 King Street
P.O. Box 3009
Christiansted, St. Croix
U.S. Virgin Islands 00820

Attorneys for Respondent

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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STATEMENT OF THE CASE

Litwin Panamerican Corporation ("Litwin") and Hess Oil Virgin Islands Corp.[1] ("HOVIC") entered into a contract whereby Litwin agreed to provide services for general maintenance and turnaround work at HOVIC's St. Croix, U.S. Virgin Islands refinery.

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[1] Hess Oil Virgin Islands Corp. is a wholly owned subsidiary of Amerada Hess Corporation. St. Croix Petrochemical Corp. is a partially owned subsidiary of HOVIC.

Pursuant to the terms of the agreement, Litwin agreed to furnish "Type I" loanees[2] to HOVIC to be under HOVIC's direct supervision, direction and control. As a negotiated provision of the agreement, Litwin agreed to make the workmen's compensation insurance premium payments to the Government Insurance Fund for Type I personnel, covering the statutory obligations of the workmen's compensation laws of the U.S. Virgin Islands. *See* app. at 2.

In turn, HOVIC reimburses Litwin for all payroll expenses for Type I employees, including workmen's compensation. The reimbursement is made by means of including the cost of procuring workmen's compensation insurance as a factor in the scheduled time and materials rate paid to Litwin for Type I workers while working for HOVIC. *See* app. at 4 (affidavit of Edward L. Weinman, Controller of HOVIC).

George N. Vanterpool was initially hired by Litwin. On at least ten occasions, Vanterpool was rehired by Litwin specifically to work as a Type I Hess turnaround loanee. Each and every time Vanterpool was loaned to HOVIC, he signed a rehire form. The rehire form stated the following:

> This is to inform you of the conditions under which you will be working while a "Hess Turnaround Loanee."

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[2] Type I work is defined in the agreement as "that performed by CONTRACTOR's [Litwin's] craftsmen, foremen and supervisors . . . where such employees have been loaned to HOVIC and are under HOVIC's direct supervision, direction and control and CONTRACTOR has no general or turnaround superintendent assigned to the work." App. at 1.

You should be aware that while working as a Loanee:

1. HOVIC personnel will control, direct and supervise all aspects of your work.
2. At no time should you receive, or act under instructions from Litwin Supervision.
3. HOVIC will provide you with safety equipment and will ensure that all safety conditions surrounding your work are met.

In addition to placing his signature at the bottom of the form, Vanterpool placed his initials in a separate box next to the provision informing him of the conditions of his employment as a Hess turnaround loanee.

On September 11, 1979, Vanterpool signed a rehire form containing the language quoted above, the same conditions of his employment as a Hess loanee which he had acknowledged on nine previous occasions. Thereafter, on November 17, 1981, Vanterpool was working on HOVIC preimses as a Hess turnaround loanee. A HOVIC foreman directed Vanterpool to link a mobile welding machine to a trailer hitch connected to a truck. The mobile welding machine and truck, as well as the tools being used by Vanterpool, were owned by HOVIC.

During the course of bending over to make the linkage, Vanterpool claims he injured his back. He subsequently filed a claim for workmen's compensation and received workmen's compensation benefits. Although Vanterpool's workmen's compensation claim was processed by the Government Insurance Fund against Litwin, HOVIC bore the cost of Litwin's contribution to the Fund pursuant to the HOVIC-Litwin contract. *See* app. at 4.

Vanterpool thereafter instituted an action against HOVIC for the same injury for which he had recovered workmen's compensation benefits. HOVIC moved for summary judgment on the grounds that an action by Vanterpool, HOVIC's borrowed employee, against HOVIC was barred by the exclusive remedy provision of the Virgin Islands Workmen's Compensation Act (the "Act"). *See* 24 V.I.C. § 284.[3]

The district court recognized that the borrowed employee doctrine is applicable in the Virgin Islands. Nonetheless, the court held that the borrowed employee's knowing consent to the waiver of his common law rights against his borrowing employer was necessary to establish workers' compensation as his exclusive remedy. *See Vanterpool* v. *Hess Oil Virgin Islands Corp.*, 589 F.Supp. 334, 340 (D.C.V.I. 1984), *rev'd in part*, 766 F.2d 117 (3d Cir. 1985). The district court relied upon the decision in *Standard Oil Company* v. *Anderson*, 212 U.S. 215 (1909), to support its holding that a borrowed employee must knowingly consent to waive his common law rights against his borrowing employer. *Vanterpool* v. *Hess Oil Virgin Islands Corp.*, 589 F.Supp. at 340. Because the district court found an issue of fact as to whether Vanterpool had knowingly consented to waive his common law rights against

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[3] V.I. Code Ann. tit. 24, § 284 provides:

§ 284. Exclusiveness of remedy

When an employer is insured under this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; but in case of accident to, or disease or death of, an employee not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be the same as if this chapter did not exist. Amended June 15, 1961, No. 762, Sess.L. 1961, p. 109.

HOVIC, it denied HOVIC's motion for summary judgment.

Upon HOVIC's motion for interlocutory appeal and stay of proceedings, pursuant to 28 U.S.C. § 1292(b), the district court certified the following controlling questions of law to the United States Court of Appeals for the Third Circuit: 1) whether the borrowed employee doctrine applies in the Virgin Islands so that workers' compensation may supply the exclusive remedy for injuries sustained by an employee loaned to the borrowing employer and engaged in the performance of a borrowing employer's work; and 2) whether, to establish workers' compensation as an injured employee's exclusive remedy against a borrowing employer, the borrowed employee must be shown to have knowingly waived his common law right to maintain a tort action for personal injury against the borrowing employer.

The Third Circuit answered the first question, which turned upon the interpretation of the local Virgin Islands Workmen's Compensation Act, in the affirmative, and therefore affirmed so much of the district court's order as held the borrowed employee doctrine applies in the Virgin Islands. The Third Circuit answered the second question, whether, in order to establish workers' compensation as an injured employee's exclusive remedy against a borrowing employer, the borrowed employee must be shown to have knowingly waived his common law right to maintain a tort action for personal injury against his borrowing employer, in the negative, and consequently reversed so much of the district court's order as held that a borrowed employee's knowing and intelligent waiver of his common law right to sue must be shown.

SUMMARY OF ARGUMENT

Although the clearly erroneous standard of review may be applicable to an insular court's interpretation of local law and matters of purely local concern, this standard should not be employed in reviewing a lower court's misinterpretation of the common law. In the case at bar, the determination of the district court that a borrowed employee must be shown to have knowingly waived his common law right to maintain a tort action for personal injury against the borrowing employer was not based on any local statute or matter of local concern. Rather, it rested on an erroneous view of the borrowed employee doctrine as set forth by this Court in *Standard Oil Company* v. *Anderson,* 212 U.S. 215 (1909). Thus, the decision by the district court was not an interpretation of a local statute or matter of purely local concern to which the United States Court of Appeals for the Third Circuit could have applied a clearly erroneous standard of review.

Furthermore, because the decision of the district court was patently erroneous, even a review under the manifest error standard would have resulted in reversal of the district court's determination that an express waiver of a borrowed employee's common law rights as against the borrowing employer need be demonstrated.

ARGUMENT

The decision of the Third Circuit herein does not conflict with decisions of the Ninth Circuit. Petitioners mistakenly assert that the decision of the United States Court of Appeals for the Third Circuit in this case is in conflict with decisions of the United States Court of Appeals for the Ninth Circuit in *Laguana* v. *Guam Visitors Bureau,* 725 F.2d 519 (9th Cir. 1984) and *Chase Manhattan Bank, N.A.* v. *Gems-By-Gordon, Inc.,* 649 F.2d 710 (9th Cir. 1981), as well as this Court's decisions in *De Castro* v. *Board of Commissioners of San Juan,* 322 U.S. 451 (1944); *Bonet, Treasurer,* v. *Texas Company (P.R.), Inc.,* 308 U.S. 463 (1940) and *Waialua Agricultural Co.* v. *Christian, et al.,* 305 U.S. 91 (1938). The underlying premise of petitioners' contention is that the district court's determination that a borrowed employee must knowingly waive his common law right to sue his borrowing employer would have been upheld had the Third Circuit applied the clearly erroneous standard of review.[4] The clearly erroneous standard may be applied by an appellate court in reviewing an insular court's decision interpreting local law or matters of purely local concern. The district court's decision on the consent issue, however, was not based on local Virgin Islands law or any matter of local concern. Rather, the district court's decision to engraft a secondary inquiry as to whether the employee consents to the application of the workmen's compensation scheme onto the routine analysis used in borrowed employee cases was based on an erroneous interpretation of common law. The decision

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[4] The Third Circuit did not specify the standard of review it employed in deciding the knowing consent issue.

is thus inappropriate for a more deferential standard of review than the legal error standard of review. Furthermore, even the application of a manifest error standard of review would have resulted in reversal of the district court on the knowing consent issue.

I. The District Court's Misinterpretation Of Common Law Was Not Appropriate For A Manifest Error Standard Of Review.

The deferential standard of review simply is not applicable to the facts in this case. Generally, an appellate court is not bound by a trial court's determinations of questions of law and a trial court's legal conclusions are fully reviewable on appeal. *See Protective Committee for Independent Stockholders* v. *Anderson,* 390 U.S. 414 (1968). While it is true that this Court, as well as the United States Court of Appeals for the Ninth Circuit, has sometimes applied the clearly erroneous standard of review to an insular court's interpretations of local law or matters of purely local concern, neither this Court nor the Ninth Circuit has applied the manifest error standard of review to circumstances as here, in which the decision of the lower court did not involve an interpretation of a local statute or any matter of purely local concern.

For example, in *Waialua Agricultural Co.* v. *Christian, et al.,* 305 U.S. 91, this Court was reviewing a decision of the Supreme Court of Hawaii[5] concerning the interpretation and validity of contracts of an incompetent, and the rights of a grantee concerning improvements on the land after the incompetent's deed had been cancelled. The determinations of the terri-

[5] The Supreme Court of Hawaii had exercised appellate jurisdiction over the case.

torial court upon the validity of instruments executed by incompetents, the interpretation of the contract of an incompetent, and the adjustments of equities concerning improvements after cancellation of a conveyance involved local law. Consequently, this Court applied the manifest error standard of review.

Similarly, in *Bonet, Treasurer,* v. *Texas Company (P.R.), Inc.,* 308 U.S. 463, this Court was reviewing the Supreme Court of Puerto Rico's interpretation of acts of the local legislature.[6] Recognizing again the deference due interpretations of local law by a local court, this Court affirmed the judgment of the Supreme Court of Puerto Rico. *De Castro* v. *Board of Commissioners,* 322 U.S. 451, also involved this Court's review of a decision of the Supreme Court of Puerto Rico wherein the lower court had interpreted local law on a matter of local concern. There, the Supreme Court of Puerto Rico had held that under applicable local legislation, the term of office of the City Manager of San Juan was for "four years, provided that during the same he observe good behavior." *De Castro* v. *Board of Commissioners,* 322 U.S. at 452.

The United States Court of Appeals for the Ninth Circuit has also limited its application of the clearly erroneous standard to its reviews of an insular court's construction of local laws. In *Laguana* v. *Guam Visitors Bureau,* 725 F.2d at 520, the question presented was whether the appellant was a public employee afforded civil rights protection from patronage dismissals. The Ninth Circuit was concerned with the

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[6] The statutes at issue were the Workmen's Accident Compensation Act of Puerto Rico, § 9 of Act No. 102, 1925 as amended by Act No. 85, 1928, and § 7 of Act No. 102, 1925.

District Court of Guam's construction of local law—a Guam statute and Executive Order. Under those circumstances, the Ninth Circuit applied a clear and manifest error standard of review, on the basis that local Guam needs and customs required a heightened deference to the district court's decision. *Id.*

Similarly, *Chase Manhattan Bank, N.A.* v. *Gems-By-Gordon, Inc.*, 649 F.2d 710, dealt with a local Guam law. There, appellant sought to impose and foreclose an equitable mortgage on real property located in Guam. Because the case dealt with a Guam loan transaction involving local real estate and the application of local Guam law, the Ninth Circuit applied the deferential standard of review.

This Court's decisions in *Waialua, Bonet* and *De Castro,* as well as the Ninth Circuit's decisions in *Laguana* and *Chase Manhattan Bank,* illustrate the narrow set of circumstances under which a court may apply the clearly erroneous standard to a question of law. Only in such cases wherein the decision of an insular court interprets a matter of local law or purely local concern may a manifest error standard of review be employed. Here, there is neither an insular court nor a decision interpreting any local law or matter of purely local concern.

In the Virgin Islands, no separate, insular judicial system exists. *See Saludes* v. *Ramos,* 744 F.2d 992 (3d Cir. 1984). The district court often shares original jurisdiction with the territorial court.[7] Consequently,

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[7] V.I. Code Ann. tit. 4 § 32 provides in part:

(a) Under section 22 of the Revised Organic Act approved July 22, 1954, the district court has the jurisdiction of a dis-

in many lawsuits, as here, the district court serves as the trial court in the first instance.

Moreover, the district court's determination that consent requires a knowing waiver by the borrowed employee of his common law right to maintain a tort action for personal injury against the borrowing employer is not based upon an interpretation of a Virgin Islands statute or any matter of local concern. Indeed, the district court relied upon no local statute or local concern in support of its holding because there is no local statute or concern supporting such a holding. Petitioners' attempt to inject an issue of local concern by characterizing the trial court's opinion as "concerning the workmen's compensation statute in the Virgin Islands" is misleading. It is true that the district court interpreted the Virgin Islands Workmen's Compensation Act and considered the statutory definitions of terms such as "employee" and "employer" in determining the applicability of the borrowed employee doctrine in the Virgin Islands. This interpretation by the district court, however, was involved only in the first of the two questions certified to the Third Circuit and was in fact upheld by the Third Circuit. The Third Circuit *affirmed* so much of the district court's order as held the borrowed employee doctrine applies in the Virgin Islands. Furthermore, petition-

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trict court of the United States in all causes arising under the Constitution, treaties and laws of the United States, regardless of the sum or value of the matter in controversy, and has general original jurisdiction in all other causes in the Virgin Islands, where exclusive jurisdiction is not conferred upon the territorial court as the inferior court of the Territory by section 23 of the Revised Organic Act. Pursuant to 4 V.I.C. § 73, the territorial court has original jurisdiction exclusive of the district court in civil actions wherein the matter in controversy does not exceed the sum or value of $500.00.

ers' assumption that the trial court considered "local industrial practices and the generally unsophisticated nature of the Caribbean labor force" to support its decision on the knowing consent issue is totally unsupported by the district court's opinion and the record.

Rather, the district court's determination rested on an erroneous view of the borrowed employee doctrine as set forth in *Standard Oil Company* v. *Anderson,* 212 U.S. 215 (1909). In the words of the district court, because HOVIC did not expressly inform Vanterpool that by working at HOVIC he would lose his right to maintain a tort action for personal injury against HOVIC, it could not "find the presence of knowing consent and full acquiescence required by *Standard Oil, supra,* to be an undisputed fact . . ." *Vanterpool* v. *Hess Oil Virgin Islands Corp.,* 589 F.Supp. at 340.

For seventy-five years, the Supreme Court has recognized the borrowed employee doctrine. In *Standard Oil Company* v. *Anderson,* 212 U.S. at 220, the Court first established the concept:

> One may be in the general service of another and, nevertheless with respect to particular work, may be transferred, with his own consent or acquiescence, to the service of a third person, so that he becomes the servant of that person with all the legal consequences of the new relation.

The Court further explained:

> It sometimes happens that one wishes a certain work to be done for his benefit and neither has persons in his employ who can do it nor is willing to take such persons into his general service. If that other furnishes him with men to do the work and places them under his exclusive control in the performance of it, those men become *pro hac vice*

> the servants of him to whom they are furnished. *Id.* at 224.

The principle is also expressed in the *Restatement, (Second) of Agency* § 227 (1958)[8]:

> A servant directed or permitted by his master to perform services for another may become the servant of such other in performing the services. . . .

The principle announced by this Court and adopted in the Restatement has often been applied in the workmen's compensation setting to bar a common law tort action for personal injury against the special employer, the employer to whom the employee has been furnished. *See generally* 1C Larson *Workmen's Compensation Law* § 48.00-48.30 (1982).

The central question in borrowed employee cases is whether the special employer has the power to control and direct the borrowed employee in the performance of his work. *See e.g., Standard Oil Company* v. *Anderson,* 212 U.S. at 221-222; *Hebron* v. *Union Oil Co. of California,* 634 F.2d 245 (5th Cir. 1981); *Huff* v. *Marine Tank Testing Corp.,* 631 F.2d 1140 (4th Cir. 1980); *Tarboro* v. *Reading Co.,* 396 F.2d 941 (3d Cir. 1968). In the instant case, at the time of the incident giving rise to his complaint, George Vanterpool was

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[8] V.I. Code Ann. tit. 1 § 4 provides:

> § 4. Application of common law; restatements
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> The rules of common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary.

employed as a Type I HOVIC loanee. Pursuant to the terms of the HOVIC-Litwin agreement, Vanterpool was therefore under HOVIC's direct supervision, direction and control. In fact, HOVIC and petitioners agree that at the time of the accident, George Vanterpool was acting under the supervision of HOVIC personnel.

Indeed, the district court recognized that "there is no factual question at all that Vanterpool was supervised and controlled by HOVIC." *Vanterpool,* 589 F. Supp. at 340. Nonetheless, the court denied HOVIC's motion for summary judgment on the grounds that "even with all the other elements of the borrowed employee doctrine established without material factual dispute" a material fact existed as to whether Vanterpool knowingly waived his common law right to sue HOVIC. *Vanterpool,* 589 F.Supp. at 341.

No court has ever considered a knowing and informed waiver of an employee's common law right to sue the special employer for damages as a prerequisite to an employee's consent to the control of the special employer. It is true that transfer of an employee to another's service requires the consent or acquiescence by the employee to the employ of the latter, before the employment relation will be held a bar to a common law suit. *Gaudet* v. *Exxon Corp.,* 562 F.2d 351 (5th Cir. 1977), *cert. denied,* 436 U.S. 913 (1978). However, the consent required is merely to the control and supervision of the special employer. *See Standard Oil Company* v. *Anderson,* 212 U.S. 215; *Hebron* v. *Union Oil Co. of California,* 634 F.2d at 247; *Huff* v. *Marine Tank Testing Corp.,* 631 F.2d at 1143-44; *Gaudet* v. *Exxon Corp.,* 562 F.2d at 355-357; *West* v. *Kerr-McGee Corp.,*

558 F.Supp. 669 (W.D. La. 1983); *Beach* v. *Owens-Corning Fiberglas Corp.*, 542 F.Supp. 1328 (N.D. Indiana 1982); *Bennett* v. *Mid-South Terminals Corp.*, 660 S.W.2d 799 (Tenn.App. 1983); *Jarrard* v. *Doyle, et al.*, 297 S.E.2d 301 (Ga.App. 1982); *Six Flags Over Georgia, Inc.* v. *Hill*, 276 S.E.2d 572 (Ga. 1981); *English* v. *Lehigh County Authority*, 428 A.2d 1343 (Pa.Super. 1981). *See also*, 1C Larson, *Workmen's Compensation Law* § 48.10 (1982).

The district court misinterpreted the common law borrowed employee doctrine, not any local law. As stated by the Third Circuit:

> . . . to require the knowing and intelligent waiver by a borrowed employee of his common law right to sue his borrowing employer is to impose an essentially redundant requirement . . . . [i]ndeed, other courts have not discussed or imposed a knowing and intelligent waiver requirement presumably because the inquiry into whether an express or implied contract of hire exists adequately accounts for the employee's consent (footnote omitted).

Vanterpool, 766 F.2d at 126. No issue of local law or matter of local concern existed to which the Third Circuit *could* have applied the deferential *De Castro* standard. Thus, there is no true and significant conflict between the decision of the United States Court of Appeals for the Third Circuit in this case, and the decisions of the United States Court of Appeals for the Ninth Circuit in *Laguana* v. *Guam Visitors Bureau*, 725 F.2d 519 and *Chase Manhattan Bank, N.A.* v. *Gems-By-Gordon, Inc.*, 649 F.2d 710.

II. Even Under A Manifest Error Standard Of Review, The Third Circuit Correctly Reversed The District Court's Determination That A Borrowed Employee Must Be Shown To Have Knowingly Waived His Common Law Right To Maintain A Tort Action For Personal Injury Against The Borrowing Employer.

Furthermore, the Third Circuit's reversal of the district court is correct even under a manifest error standard. The interpretation of the district court is inescapably wrong and the decision of the district court concerning the issue of knowing consent is patently erroneous.

A substantial distinction exists between a contract entered into by an employee and a special employer wherein the employee acquiesces to the control and direction of the special employer, and a contract in which an employee must not only acquiesce to the control of the special employer, but must be informed of and knowingly waive his common law right to sue the employer. Workmen's compensation coverage is not contractual. Coverage does not depend on the consent of the parties. Rather, when an employee begins work, he is presumed to have consented to the trade-off of possibly large common law damages for smaller but certain workmen's compensation benefits. *Gaudet* v. *Exxon Corp.*, 562 F.2d at 356. Once the employee has consented to the control of the special employer, by the act of continuing in employment, the employee is presumed to have consented to the waiver of his common law right to sue for damages. *Gaudet* v. *Exxon Corp.*, 562 F.2d at 356. As explained by the Third Circuit, "[t]he borrowed employee may or may not make an express or implied contract of hire with a borrowing employer, but once such a contract is made,

there is no secondary inquiry as to whether the employee consents to the application of the compensation scheme itself." *Vanterpool,* 766 F.2d at 126.

In the instant case, as the district court found, "having signed the 'Rehire Form', there could be no doubt that Vanterpool knew he would be working as a 'Hess Turnaround Loanee'." *Vanterpool*, 589 F.Supp. at 340. Moreover, Vanterpool had been intermittently employed as a Hess Loanee for over three years and regularly employed by HOVIC for two years prior to the date of the accident. The case at bar is therefore not one where "an employee momentarily [left] the work site of his original employer and [began] work temporarily for another employer." *Gaudet* v. *Exxon Corp.,* 562 F.2d at 357. Rather, even disregarding the clear meaning of the signed rehire forms, the fact of Vanterpool's continued work for HOVIC, under the direction and control of HOVIC, compels the conclusion that he agreed that considering the likelihood of injury and the likely severity of injury within his position at HOVIC, the benefits offered by workmen's compensation were acceptable to him, and that he consented to waive his common law right to sue HOVIC for damages. *See Gaudet* v. *Exxon Corp.,* 562 F.2d at 356-357. Under these circumstances, the decision of the district court concerning the issue of knowing consent is so obviously erroneous, even the application of a manifestly erroneous standard of review to the district court's decision would result in reversal.

CONCLUSION

For all of the above reasons, this cause should not be reviewed by this Court.

Respectfully submitted,

BRITAIN H. BRYANT, Esquire
Counsel of Record
NANCY V. YOUNG, Esquire

LAW OFFICES OF BRITAIN H. BRYANT
#7 King Street
P.O. Box 3009
Christiansted, St. Croix
U.S. Virgin Islands 00820

Attorneys for Respondent

APPENDIX

APPENDIX A

This AGREEMENT, between LITWIN PAN-AMERICAN CORPORATION, a Kansas corporation with offices at P.O. Box 1469, Kingshill, St. Croix, U.S. Virgin Islands (hereinafter referred to as "CONTRACTOR") and HESS OIL VIRGIN ISLANDS CORP., a U.S. Virgin Islands corporation, with offices at P.O. Box 127, Kingshill, St. Croix, U.S. Virgin Islands 00850 (hereinafter referred to as "HOVIC").

WITNESSETH:

WHEREAS, HOVIC desires to retain CONTRACTOR to provide personnel to perform services as herein set out for general refinery maintenance and turnaround work at HOVIC'S St. Croix, U.S. Virgin Islands refinery (the "Refinery"), and

WHEREAS, CONTRACTOR desires to provide such personnel and services under the terms and conditions set forth herein;

NOW, THEREFORE, the parties hereto agree as follows:

I. SERVICES BY CONTRACTOR

A. Types of Work

1. Type I—Type I work is defined as that performed by CONTRACTOR'S craftsmen, foremen and supervisors pursuant to this Agreement where such employees have been loaned to HOVIC and are under HOVIC's direct supervision, direction and control, and CONTRACTOR has no general or turnaround superintendent assigned to the work. Upon having furnished such personnel to HOVIC, CONTRACTOR shall not be responsible to HOVIC or

liable for the workmanship of such personnel or for any mistake, error or act of negligence of such personnel.

2. Type II—Type II work is defined as that performed by CONTRACTOR pursuant to this Agreement and for which CONTRACTOR has responsibility for direct supervision, direction * * *

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IV. INSURANCE AND INDEMNITY

A. Insurance Furnished by Contractor

CONTRACTOR shall maintain at its own expense the following insurance at all times while performing work hereunder, whether such work be classified as Type I or Type II.

1. *Workmen's Compensation Insurance*

   a. Workmen's Compensation Insurance covering the statutory obligations of the Workmen's Compensation Laws of the U.S. Virgin Islands, all other applicable statutes and the extraterritorial provisions of the Workmen's Compensation Law of any state of the United States or any foreign country.

   b. Employer's Liability Insurance coverage for all employees with minimum limit of $1,000,000.00 per occurrence as protection for claims brought under Common Law.

2. *Liability Insurance*

   a. Comprehensive General Liability Insurance with limits of $500,000 per person, $1,000,000 per

occurrence bodily injury and $5,000,000 per occurrence for property damage, including Completed Operation and Contractual Liability Insurance covering the indemnity set forth in Paragraph IV.B.2a. of this Agreement.

APPENDIX B

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

Civil No. 1983/341

Action for Personal Injuries and Damages

Jury Trial Demanded

GEORGE N. VANTERPOOL, ET UX,
Plaintiff,

v.

HESS OIL VIRGIN ISLANDS CORP.,
Defendant.

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

TERRITORY OF THE VIRGIN ISLANDS
DISTRICT OF ST. CROIX, SS:

EDWARD L. WEINMAN, being duly sworn deposes and states that:

1. I am and at all times pertinent to this lawsuit was the controller of Hess Oil Virgin Islands Corporation, and am familiar with the contracts, books and records of Hess.

2. With Type I employees, Hess reimburses Litwin Panamerican Corp. for all payroll expenses for these workers, including Workmen's Compensation.

3. Workmen's Compensation is one of the factors in the time and materials rate paid to Litwin for George

N. Vanterpool's services and other Type I workers while working for HOVIC.

4. Litwin Panamerican Corporation works only for HOVIC in St. Croix, U. S. Virgin Islands and for each time George N. Vanterpool worked as a Hess turn-around loanee he signed a form which stated that:

1) HOVIC personnel will control, direct and supervise all aspects of your work.

2) At no time should you receive, or act under instructions from Litwin supervision.

3) HOVIC will provide you with safety equipment and will ensure that all safety conditions surrounding your work are met.

all as more fully indicated by the exhibit attached hereto, signed by George N. Vanterpool.

/s/ EDWARD L. WEINMAN
Edward L. Weinman

Dated: 3/30/84

SUBSCRIBED and SWORN to before me this 30 day of March, 1984.

/s/ BRITAIN H. BRYANT
Notary Public

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Affidavit was served upon John K. Dema, Esq., 42-43 Strand Street, Christiansted, St. Croix, by hand delivery this 30th day of March, 1984.

/s/ BECKY THOMAS

APPENDIX C

LITWIN PANAMERICAN CORPORATION

REHIRE FORM

NAME: George Vanterpool SOCIAL SECURITY NO. 580-05-0097

ADDRESS: 812 TEL. #: _____

NEXT OF KIN: _____ TEL. #: _____

_____ RELATION: ___

BADGE #22099 CRAFT #150 RATE $700
LAST YEAR WORKED 79

☒ This is to certify that I have read and am familiar with the job rules and safety rules that I originally acknowledged on _____

☒ I understand that I am being hired for the period of the following turnarounds:

The period of employment will be approximately _____ ( ) weeks

Approximate dates: _____ to _____

This is to inform you of the conditions under which you will be working while a "HESS Turnaround Loanee".

You should be aware that while working as a Loanee:

1. HOVIC personnel will control, direct, and ☒ supervise all aspects of your work.
2. At not time should you receive, or act under instructions from Litwin Supervision.
3. HOVIC will provide you with safety equipment and will ensure that all safety conditions surrounding your work are met.

CARDEX ☒ PAYROLL ☐ M.F. ☒

[Employee's Withholding Exemption Certificate, W-4, showing 2 plus 5 — 7 total exemptions]

DATE OF HIRE: 9-11-1979

APPROVED: /s/ [Illegible]
OFFICE MANAGER

SIGNED: /s/ GEORGE VANTERPOOL

APPROVED: /s/ [Illegible]
CONSTRUCTION MANAGER

Exhibit I